BAIL SLIP

The Appellant/Accused namely Loudusamy was directed to be released on bail in Crl.M.P.No. 2551/01 in Crl Appeal No. 381/01 dated 26/4/2001 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.381 of 2001

Loudrusamy .. Appellant/Accused

vs.

State rep. By
Inspector of Police
Bommidi Police Station,
Cr.No.391/96 .. Respondent/complainant

This appeal is filed under Section 374 of Cr.P.C. against the Judgment in S.C.No.65 of 2000 dated 30.03.2001 on the file of the Principal Sessions Judge, Dharmapuri at Krishnagiri.

For Appellant : Mr.K.V.Sridharan
For Respondent : Mr.V.R.Balasubramaniam
Addl.Public Prosecutor

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.65 of 2000 on the file of the Principal Sessions Judge, Dharmapuri at Krishnagiri.

2. The short facts of the case of the prosecution are that due to previous enmity on the ground that the accused had raped his wife. On the date of occurrence, while the accused and P.W.8 the wife of the accused were picking twigs,the deceased made yet another attempt to outrage the modesty of P.W.8, the wife of the accused, the accused took an aruval and assaulted the deceased all over his body causing instantaneous death.

3. The case was taken on file by the learned Judicial Magistrate No.II,Dharmapuri ,after furnishing copies under section 207 Cr.P.C., the learned Judicial Magistrate had committed the case to the court of Sessions under Section 209 Cr.P.C. On appearance of the accused on

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summons, the learned Sessions Judge has framed charges against the accused under Section 302 of IPC and when the offence was explained to the accused, he pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 11 were examined. Exs P1 to P16 were exhibited and M.Os 1 to 10 were marked.

4a) P.Ws.1,2,4 who are the eye witnesses, have failed to support the case of the prosecution and hence they were treated as hostile witnesses. P.W.3 is not an ocular witness. He would depose to the fact that he saw the accused running away from the place of occurrence with a weapon.

4b. P.W.5 is the doctor, who had conducted an autopsy on the corpse and issued Ex P3 postmortem certificate. The Doctor has opined that the deceased would have died some 20 to 22 hours prior to the autopsy.

4c.P.W.7 is the recovery mahazar witness. P.W.8 is the wife of the accused, who was also treated as hostile witness. P.W.9 and P.W.10 are the official witnesses. P.W.11 is the Investigating Officer, who on the basis of the complaint preferred by P.W.1, had registered a case under Cr.No.391/98 under Section 302 of IPC. Ex P13 is the First Information Report. According to him, due to heavy rain, he could not visit the place of occurrence immediately. But he visited only in the next morning ie., on 17.7.1998 and prepared Ex P4 Observation Mahazar in the presence of P.W.6 and recovered M.O.2 blood stained earth and M.O.3 sample earth and also M.O.1 lungi under Ex P5 mahazar. Ex P14 is the rough sketch drawn by P.W.11, who had conducted an inquest on the same day from 7.30 a.m., to 11.00 a.m., in the presence of the witnesses. Ex P16 is the inquest report. According to him, he arrested the accused on 18.7.1998 at about 4.00p.m., at Salem -Dharmapuri Road near Thoppur Village and has recorded the voluntary confession statement of the accused in the presence of P.W.7. The admissible portion of the confession statement of the accused is Ex P8. The accused had taken them to railway bridge near Periyar dam and took out M.O.4 weapon and M.O.5 shirt from the hidden place which was recovered under Ex P6 Mahazar in the presence of P.W.7. After recording the statement of the witnesses and after completing the investigation, P.W.11 has filed the charge sheet against the accused on 16.11.1998 under Section 302 of IPC before the learned Judicial Magistrate No.2, Dharmapuri, at Krishnagiri.

5. When the incriminating circumstances were put to the accused, the accused would say that as a self defence , he has assaulted the victim with the weapon and that the case has been foisted against him by the police and the occurrence had not occurred as stated by the prosecution.

6. After scanning the evidence both oral and documentary,the learned Sessions Judge has held that the accused is guilty under Section 304 (i) IPC and convicted and sentenced him to undergo four years rigorous imprisonment and slapped a fine of Rs.1000/- with default sentence. Aggrieved by the findings of the learned Sessions Judge, accused has

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preferred this appeal.

7. Now the point for determination in this appeal is whether the conviction and sentence under Section 304(1) of IPC against the accused is sustainable for the reasons stated in the memorandum of appeal?

8. Heard Mr.K.V.Sridharan, learned counsel for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their rival submissions.

9.The Point:

P.W.1,P.W.2,P.W.4 and P.W.8, who are the eye witnesses, have not supported the case of the prosecution and hence they were treated as hostile witnesses. P.W.3 is not an ocular witness. According to him, he saw the accused running away from the place of occurrence with a weapon. Relying on the evidence of P.W.8, in the chief examination, the learned Sessions Judge has come to a conclusion that an offence under Section 304 (i) IPC has been attracted against the accused. P.W.8, who is none other than the wife of the accused, in the chief examination would depose that as though she had witnessed the occurrence, the prosecution has allowed her to depose up to the point, when she denied the fact that she was not examined by the Investigating Officer. In the chief examination, P.W.8 till she was treated as a hostile witness, would depose that in her presence, her husband/accused had assaulted the victim with M.O.4 Aruval.

9a. The motive for the occurrence was also spoken to by P.W.8. According to her, the accused had once raped her and also transmitted venereal disease to her and on the occurrence date, when she was picking twigs along with her husband, the accused herein, the victim came there and made another attempt to molest her and after hearing her distress call, the accused immediately rushed to her rescue and when the accused prevented the deceased from molesting P.W.8, the victim took a stone and attempted to kill the accused and in self defence, he with M.O.4 Aruval had inflicted injuries on him, which resulted in the death of the victim. But after treating P.W.8 as hostile witness, the learned Public Prosecutor put the question in the cross examination that at the time of occurrence, P.W.8 was not in the place of occurrence, but she was in her house. A perusal of statement under Section 161(3) of Cr.P.C. also reveals that even before the police, at the time of investigatiion, she has stated that only after hearing the occurrence, she rushed to the place of occurrence from her house. Under such circumstances, the evidence of P.W.8 in the chief examination is not of any use to prove the case of the prosecution. If the evidence of P.W.8 goes then we left with no ocular witness in this case. P.W.3 is not an ocular witness, but only a circumstantial witness.

9b. Apart from this, the case of the prosecution hinges upon the recovery of the weapon from the accused on his confession. According to P.W.11, the accused was arrested by him on 18.7.1998 at about 4.00p.m. near the junction of Thoppur village in Salem Dharmapuri main road and that he had recorded the voluntary confession statement of the accused in

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the presence of P.W.7. But even according to the evidence of P.W.1 and P.W.8, the version of P.W.11 cannot be true because according to P.W.1 he saw the accused in the police statement next day morning ie., on 17.7.1998.

9c. According to P.W.8 , she and the accused surrendered before the Deevatupatti Police Station on 16.7.1998 and narrated the incident before them and that they detained both of them through out the night in the station and produced them on the following morning at 10.00 a.m before the Bommidi Police. So from the evidence of P.W.1 and P.W.8 the recovery under Section 27 of the Evidence Act by P.W 11 also false to the ground.

10. The learned Additional Public Prosecutor would draw the attention of this Court to the statement made by the accused under Section 313 of Cr.P.C. The cardinal principle of Criminal Jurisprudence is that the accused need not prove his innocence. The burden is only on the prosecution to prove the guilt of the accused. Even though in the statement under Section 313 of Cr.P.C. the accused would say that he assaulted the victim only by way of private defence. He would emphatically say at the end that this is a put up case by the police. At this juncture, it is pertinent to note that at the time when the charge was framed by the learned Sessions Judge and was explained to him, he would deny the charge. He has not admitted the charge. So I am of the view that only on the basis of the admission in statement under Section 313 of Cr.P.C. the accused cannot be convicted in the absence of any reliable evidence on the side of the prosecution.

11. Under such circumstances, I do not find any reason to uphold the findings of the learned Sessions Judge in S.C.No.65 of 2000 on the file of the Principal Sessions Judge, Dharmapurai at Krishnagiri. The point is answered accordingly.

12. In the result, the appeal is allowed , setting aside the Judgement in S.C.No.65 of 2000 on the file of the Principal Sessions Judge, Dharmapuri at Krishnagiri and the accused is acquitted from the charges levelled against him The fine amount paid by the accused shall be refunded to the accused. The bail bond executed by the appellant shall stand cancelled.

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To,

1. The Principal Sessions Judge, Dharmapuri at Krishnagiri
2. The Judicial Magisitrate No.11, Dharmapuri
3 -do- the Chief Judicial Magistrate,Dharmapuri at Krishnagiri
4. The Superintendent of Central Prison, Vellore.
5. The Public Prosecutor, High Court, Madras
6. The Inspector of Police, Bommidi Police Station.

+ One cc to M.r K.V. Sridharan Advocate sR 34154

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